



Northwest Indian Fisheries Commission

6730 Martin Way E., Olympia, Washington 98516-5540
Phone (360) 438-1180 www.nwifc.org FAX # 753-8659

June 25, 2012

Nancy Sutley, Chair
White House Council on Environmental Quality
722 Jackson Place, N.W.
Washington, DC 20503

Re: Tribal response to the regional federal action plan to address Northwest Tribes' Treaty Rights at Risk initiative.

Dear Ms. Sutley:

The Northwest Indian Fisheries Commission (NWIFC) would like to thank you and the federal agencies for the effort in development of an "action plan" to address the grave concerns raised by the treaty tribes' in western Washington through the *Treaty Rights at Risk* initiative. We would also like to express our appreciation for the efforts made by Dennis McLerran, EPA; Will Stelle, NOAA; and Roylene Rides at the Door, NRCS to develop this plan. Their attention and understanding to the concerns we raised has been greatly supportive of our call to action. We view this work as an important step forward toward protecting the tribes' treaty-reserved rights. We all recognize that every difficult journey must begin with a first step and we recognize and appreciate that the federal government has taken an important step down a long and necessary path.

The NWIFC would like to take this opportunity to provide the Council on Environmental Quality (CEQ) with our response to these initial steps taken by the federal agencies. It is our hope that this letter, and letters from NWIFC member tribes, will help CEQ evaluate the sufficiency of the federal action plan, and ultimately support CEQs effort to guide the actions of the federal agencies in a way that honors the federal government's trust obligations by protecting and assuring a sustainable harvest of treaty-reserved resources.

The Regional Federal Action Plan

The plan is clearly an important step forward. The establishment of a mechanism for the tribes and the federal agencies to address and resolve impediments to salmon recovery in each watershed is an important step. We are, however, concerned in that the plan does not describe a clear path that changes the way agencies do business that will lead to salmon recovery and protection. The plan generally lacks specificity and concrete commitments to protect and promote treaty rights. Consequently, while the federal response describes itself as an "action

plan,” it lacks a logical, practical, and accountable pathway to the tribes’ desired outcome – a sustainable harvest of treaty reserved resources, including salmon.

The Tribal-Federal Habitat Forum

We are heartened by the federal agencies willingness to establish a mechanism for the member-tribes to address the barriers to salmon recovery in their watersheds. We agree with the federal agency leads that addressing specific watershed-level concerns is an important element of protecting treaty resources. However, we are concerned that the federal proposal lacks the leadership structure necessary to overcome the inevitably difficult hurdles to watershed recovery. As we have consistently stated: “somebody needs to be in charge,” and without adequate leadership and authority to work across agency lines and through difficult political tangles, we fear that the forum’s design may not produce the solutions needed to achieve recovery. The forum must provide for ample authority and leadership to provide clear direction and change.

Coordination and alignment of agencies’ actions

The tribes are encouraged that the federal agencies have begun to internalize the tribes’ call to change. Particularly, we are encouraged by the agencies desire to better coordinate and align actions to support salmon recovery. However, there are important differences in what we have called for and what the agencies have committed to in this plan.

First, the agencies approach to a plan or strategy appears to be inconsistent with our call for change. The plan generally lacks specificity and concrete commitments to making changes in the way agencies do business that would lead to salmon recovery and protection. For example, it is unclear what the Army Corps of Engineers (Corps) is intending to accomplish in number one of the policy coordination section. In the section, the Corps references conversations with regional NOAA officials about compliance and enforcement to protect Puget Sound habitats, but commits only to defer to existing national guidance regarding enforcement of incidental take statements. Moreover, the attached matrix adds another level of complexity by listing agency activities without providing sufficient detail to lay out a clear agency strategy. This makes it difficult to evaluate the merits of the proposed specific agency actions, let alone the strategy as a whole. Without sufficient detail, it is hard to perceive how the identified inventory of activities can be used as a plan to achieve the protection of the tribes’ treaty rights, and in particular salmon recovery.

In many cases the “plan” also commits to actions in which the tribes have either disagreed with or have expressly stated do not go far enough to protect treaty-reserved resources. Rather than it being an identification of what actions are need to achieve salmon recovery, it appears to be more of a catalog of what the agencies are currently doing or are willing to do.

Treaty Rights Protection

Since the beginning, our call for the federal government to take action has been centered on protecting tribal treaty-reserved rights. Specifically, in *Treaty Rights at Risk*, the member tribes called for:

1. Stopping the disparate treatment of Indian tribes when applying salmon conservation measures.
2. Protecting and restoring western Washington treaty rights by better protecting habitat.
3. Establish federal oversight and coordination to align environmental and conservation programs to achieve salmon recovery and protect treaty-reserved rights.

These calls to action remain central to the tribes concerns, and therefore should figure prominently in the federal government's response.

Unfortunately, the action plan seems to carefully avoid any commitment to treaty rights protection. The federal response only refers to meeting treaty rights once – in the context of implementing the Corps of Engineers' levee vegetation policy. Other than that, the stated intent of the federal plan is to ensure "steady improvements in habitat conservation." The federal response does not include a commitment to assure that our salmon recovery and protection plans will be implemented to achieve our goal of harvestable fish that leads to the protection of treaty rights. It also does not include a commitment to address the tribes' concerns that they bear a disproportionate share of the salmon conservation burden. The closing sentence of the plan seems to be intended to diminish the federal obligation and further distance the agencies from any responsibility to protect treaty rights.

Although habitat loss is a central concern of the Treaty Rights at Risk initiative, it is ultimately the subsequent loss of harvest opportunity which directly and tangibly impacts the tribes. Without fish and shellfish to harvest, the treaty right is rendered meaningless. Therefore, it is essential to the protection of tribal treaty rights that federal actions assure future harvest opportunity. Habitat loss and degradation are the primary contributors to the decline of the salmon resource and harvest opportunities. This means that the federal government must support both habitat protection and restoration and the hatchery production necessary to mitigate for reduced natural production to provide for reasonable and sustainable treaty fisheries in the near-term and the long-term.

A Call to Action

As we have stated since the outset, Treaty Rights at Risk, is about a call to action to turn the tide of habitat loss, to protect treaty rights, and to treat the tribes with equity. We are encouraged by the federal engagement and the efforts to date. However, the action plan ultimately fails to assure the tribes that salmon will be successfully recovered such that their treaty rights are protected. To that end, we request four additional actions to help guide federal efforts:

1. CEQ should work with the Department of Justice to implement an understanding across all agencies of the obligations and federal trust responsibilities that those agencies with jurisdiction over matters that affect harvest, hatcheries and habitat have in regards to protecting the tribes' treaty-reserved rights.
2. CEQ should commit to providing leadership and continuity of high-level oversight and expectation of result to enable successful resolution and implementation of solutions to impediments to salmon recovery in each watershed. Basically, we ask for leadership from "the top" so the proposed forum can be successful in accomplishing salmon recovery objectives on the ground in each watershed.
3. CEQ should direct the agencies to include the specific measures provided in the March 2nd correspondence from NWIFC and from the Lummi Nation in their action plan. In those instances where the agencies believe that they have either addressed those measures or are otherwise precluded from addressing those measures, we request that the agencies provide explanations of the perceived barriers or limitations to the tribes.
4. We request that CEQ provide direction to the agencies that as part of protecting the tribal treaty right to fish they must not apply disparate conservation burdens on the tribes as they carryout their other statutory obligations.

Again, we greatly appreciate the federal attention and concern over this matter. We remain committed to working with you to ensure the protection of tribal treaty-reserved rights. As a next step, we request a meeting with you to refine and develop implementation mechanisms important to this plan. Please contact Michael Grayum, Executive Director of the NWIFC at (360) 528-4309 or mgrayum@nwifc.org regarding scheduling or with any questions regarding this correspondence.

Sincerely,



Billy Frank, Jr.,
Chairman

cc: Tribal Chairs
NWIFC Commissioners
Jay Jensen, Associate Director, Land and Water Ecosystems, CEQ
Jodie Gillette, White House Senior Policy Advisor for Native American Affairs
Will Stelle, Regional Administrator, NMFS
Dennis McLerran, Regional Administrator, EPA
Roylene Rides at the Door, State Conservationist, NRCS
Ignacia Moreno, Assistant Attorney General, Environment and Natural Resource Division, DOJ